struction of this subsection the seizure and sale by the Sheriff is not an act of bankruptcy which relates back so to invalidate the creditors' execution, and he can retain the benefit thereof provided that the execution is completed within the 21 days (*Ex parte Villars*, L.R. 9 Ch. App., pp. 432-445). Under the Ordinance, however, section 3 (1) (e), the seizure is itself an act of bankruptcy, and accordingly a creditor can never receive the proceeds of the execution without having notice of an act of bankruptcy with the result that section 48 (1) of the Ordinance comes into operation, and he is not allowed to retain the benefit of his execution against the Official Assignee. The effect of the creditor issuing execution therefore is merely to provide other creditors with a ready made act of bankruptcy upon which they can found a petition at any time within six months under the provisions of section 5(1) (c), and the diligent creditor who receives favourable consideration under the English Act, obtains no preference whatever under the Ordinance.

*Order Accordingly.*

Solicitors for the Applicants—*Braga & Taylour*

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[ORIGINAL CIVIL JURISDICTION]
**TERRELL, Ag. C.J.**
**November 27, 1937.**

## *IN RE* YEO SOO THEAM DECEASED.

## YEO KEE JENG AND ANOTHER (infants)
**v.**
## YEO SOO HAW AND ANOTHER.

**[SINGAPORE SUIT No. 366 of 1937]**

*Will—Construction—'Male descendants'—Adopted sons.*

If it appears from a will that the testator has intended to provide for adopted sons of descendants as well as natural sons of descendants the term 'son' and 'descendant' may be construed to include such adopted sons and descendants as well as natural sons and descendants.

SUMMONS.

*Page* for plaintiffs.

*Green* for first defendant.

*Hoalim* for second defendant.

The facts and arguments appear sufficiently from the judgment.

*Cur. Adv. Vult.*

**TERRELL, AG. C.J.**—This is an administration action in which infant beneficiaries are plaintiffs and the sole surviving trustee of the will of Yeo Soo Theam, deceased, is defendant. By an order made in this action on the 25th October 1937 Yeo Siew Seah, also a beneficiary, was added as a defendant.

It is not disputed that the plaintiffs are entitled to an order for accounts, but apart from that question the Court is asked to decide certain questions of construction arising under clauses 19 and 24 of the will in both of which the plaintiffs are interested.

Clause 19 contains a devise of 5 houses to the trustees upon trust to pay the net rents to the testator's grandson Yeo Siew Heng during his life and:—

> "From and after the death of the said Yeo Siew Heng and during 21 years thereafter In Trust to pay such net rents to the sons of the said Yeo Siew Heng in equal shares. On the expiry of the said term of 21 years in Trust to sell and convert into money the said lands and houses and divide the proceeds of such sale and conversion equally among the sons of the said Yeo Siew Heng in equal shares."

The said Yeo Siew Heng died on the 27th July 1932 and it was proved before me or admitted that he left two sons in Singapore, one natural and one adopted, who are the present infant plaintiffs, and one adopted son in China, who is also an infant and is represented by the plaintiffs in this action.

Under clause 24 the residue is devised and bequeathed to the trustees upon trust for the collection of the net rents and profits and for the accumulation and investment thereof 'until the youngest male descendant of mine living at the time of my death shall or would have attained the age of 21 years on which last mentioned event Upon Trust to sell and convert my said residuary estate into money and divide the proceeds of such sale and conversion among such male descendants of mine in the male line as shall be living at such period of distribution in equal shares *per capita* irrespective of the degree or remoteness of relationship of such descendants and without regard to the principle of representation in such wise that any grandson or remoter male issue shall be entitled to a share as much as a son and that the male issues of a son or remoter issue shall each take an equal share to that of such son or remoter issue."

Clause 25 of the will contains certain definitions and is as follows:—

> "I hereby declare that the following definitions shall apply to the respective words as used in this my will:
>
> (a) The word 'son' shall mean and be construed as son begotten of me by my wife or by any of my concubines and also any son adopted by me or by my wife or by any of my concubines. The words 'son' 'male child' 'male children' 'male descendant' 'male descendants' 'male issue' 'male issues' have respectively corresponding meanings.

(b) The expressions 'issue in the male line' and similar expressions shall mean my son or my grandson by my son or my great grandson by my grandson and so forth."

It is argued by the second defendant that the dictionary provided applies only to the first generation, i.e., to the testator's sons and adopted sons, and that the remoter issue must be natural sons or grandsons and that adopted grandsons or great grandsons are excluded. The plaintiffs, on the other hand, argue that all adopted sons in the male line whether sons, grandsons or great grandsons are included.

The principles upon which the Court acts in such cases have been laid down by Lord Cairns in *Hill* v. *Crook*, 6 H.L. 265 and although he was there considering whether the term "children" could include illegitimate children, it appears to me that similar principles apply in considering whether "son" can include an adopted son. Lord Cairns says *ibid* 282:—

> "The term 'children' in a will *prima facie* means legitimate children and if there is nothing more in the will the circumstance that the person whose children are referred to, has illegitimate children will not entitle those illegitimate children to take. But there are two classes of cases in which the *prima facie* interpretation is departed from. One class of cases is where it is impossible from the circumstances of the parties that any legitimate children could take under the bequest."

It was by an application of this principle that the case of *British Malaya Trustee and Executor Company Limited* v. *Chan Mek Tuan and others (supra)* at p. 233 was decided In that case the testator had a natural daughter and three adopted sons, and speaks in his will of his "last surviving child." Unless his adopted sons were included in the definition of "child" it is obvious that on the death of his daughter there would be no child surviving, and accordingly the objects of the bequest must necessarily include the adopted sons.

Lord Cairns proceeds 6 H.L. 265 at p. 283.

> "The other class of cases is of this kind. Where there is upon the face of the will itself and upon a just and proper construction and interpretation of the words used in it, an expression of the intention of the testator to use the term children, not merely according to its *prima facie* meaning of legitimate children but according to a meaning which will apply to, and which will include, illegitimate children."

In the case of *Seah Liang Siah* v. *Siah Eng Kiat*, 4 S.S.L.R. 22 the Court of Appeal while quoting with approval the principles laid down by Lord Cairns in *Hill* v. *Crook* (*supra*) came to the conclusion that the terms of the will did not justify the conclusion that the testator intended to include in a bequest two illegitimate grandsons.

In the present case the will has to be looked at as a whole, and the conclusion which I draw is that the testator wished to provide for as great a number as possible of male descendants in the male line, and that the presumption is that among such male descendants he wished to include such descendants as were descendants merely by adoption. Such a conclusion would be in accordance with Chinese custom under which adopted sons and remoter issue are able to perform the ceremonies connected with ancestral worship as fully as natural sons and their descendants I have not however thought it necessary to recapitulate my reasons for arriving at this conclusion as in my opinion the matter is put beyond doubt by the express terms of clause 25.

The first sentence of clause 25 (a) refers clearly only to the testator's own sons and adopted sons, but the second sentence which directs that various expressions such as "son," "male issue," "male children" etc. shall have corresponding meanings, is significant in that it again mentions the word "son." Clearly "son" in the second sentence cannot have the same meaning as "son" in the first sentence; otherwise it would be merely tautalogous. I also think that in this context "corresponding" means "analogous." I conclude therefore that adopted sons whether grandsons or great grandsons are in exactly the same position as natural grandsons and great grandsons.

In the result, for the purpose of clause 19, the two plaintiffs and the adopted son in China will all be entitled to participate, and will also be entitled to be numbered among the "male descendants" referred to in the residuary bequest in clause 24.

There will have to be an inquiry as to the date of distribution under clause 24 but this should not present any difficulty.

The following accounts and inquiries will also be directed:—

(1) An inquiry as to what the testator's residuary estate consisted of at the time of his death.
(2) An inquiry as to what it now consists of.
(3) An account of the receipts and payments in respect of the residuary estate since the testator's death.
(4) An inquiry as to the persons entitled to the residuary estate.
(5) An account of the rents and profits of the five houses in clause 19 of the will from 27th July 1932 to the date of the Receivership 30th September 1937.

By consent, the order of the 1st October 1937 will be extended so as to appoint the British Malaya Trustee & Executor Company Limited receivers as from the date hereof of the properties referred to in clause 20 of the will.

*Order Accordingly.*

Solicitors for plaintiffs:—*Allen & Gledhill.*

Solicitors for first defendant:—*John G. Campbell & Co.*

Solicitors for second defendant:—*Mendes & Ahlip.*

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[ORIGINAL CIVIL JURISDICTION]

TERRELL, Ag. C.J.

December 3, 1937

## MARY JOSEPH AROKIASAMY

**by her next friend S. P. Arokiasamy**

**vs.**

## G. S. SUNDRAM.

[SINGAPORE SUIT NO. 181 OF 1937].

*Contract—Marriage—Breach of promise of marriage—Hindoo man—Christian girl—Married man's promise to marry—Ignorance of promisee—Public Policy.*

A promise of marriage made by a married man who, at the time of the promise, holds himself out as a widower, is not against public policy.

A promise of marriage made by a Hindoo man to a Christian girl is actionable at law, as the status of a Hindoo does not prevent his contracting a valid marriage with a Christian.

If a disability due to status in fact exists, and is known to the defendant, but not known to the plaintiff it will not save the defendant from the consequences of an action for breach of promise of marriage.

ACTION for damages for breach of promise of marriage and for seduction.

The Plaintiff by her Statement of Claim delivered the 28th June 1937, and subsequent particulars, alleged that she and the Defendant verbally agreed on or about the 27th April 1935 to marry one another, and that, relying on the said agreement, she allowed the Defendant in the months of May and June 1935 to seduce her, whereby she became pregnant of a child, of which she was delivered on the 18th March 1936: that the Defendant now refused to marry her. She claimed general damages $10,000.— and special damages $420-00 (comprising medical expenses connected with her confinement and subsequent attendance on the child, $45-00, and maintenance of the child for 15 months, March 1936 to June 1937 @ $25.- per month = $375.-).

The Defendant's Defence delivered the 16th August 1937 denied (paragraphs 1 and 2) the promise of marriage and seduction, and (para.3) the birth of a child to the Plaintiff, or the Defendant's paternity. He admitted (para.5) that he was not, and never had been, willing to marry the Plaintiff. Finally, he alleged (para.4) that he was, at all material times a Christian, and that the Defendant was at all material times a Hindoo, and that, at the time of the alleged promise, he was, to the knowledge of the Plaintiff, already married to one Navaneethan.

The facts disclosed by the evidence appear sufficiently from the judgment.

*de Mello* for the Plaintiff.

*Mitter*, for the Defendant.—The evidence shows that Defendant was until October 1935, to the knowledge of the Plaintiff and her family, already married to Navaneethan, and a married man cannot make a valid promise to marry another woman; *Wilson* v. *Carnley*, (1908) 1 K.B. 729, C.A. *Spiers* v. *Hunt*, (1908) 1 K. B. 720; *Fender* v. *Mildmay*, (1937) W.N.275. Besides, the Defendant is by religion a Hindoo, and the Plaintiff is a Christian, and marriage between a Hindoo and a Christian is not possible.

*de Mello* in reply.—Neither the existence of the woman, Navaneethan, nor her alleged death in October 1935 has been proved. No documentary or other reliable evidence on either point has been produced, nor disclosed in the Defendant's affidavit of documents. Both the marriage and the death have to be strictly proved. The Defendant may have been merely cohabiting with Navaneethan, without being ever married to her. In any case, neither the Plaintiff nor her parents ever saw her, and they have definitely stated in evidence that the Defendant from the beginning represented himself as a widower. The Defendant's two letters to the Plaintiff dated the 7th and 12th September 1935 bear out this. The cases cited are not in point. In the two former, decided in 1908, the Defendant was, to the knowledge of the Plaintiff at the time of the alleged promise of marriage, a married man. No such knowledge has been established here. The recent case of *Fender* v. *Mildmay* turned entirely on the effect of a decree *nisi* for dissolution of marriage.

Moreover, no proof has been adduced that the Defendant is a Hindoo, except the Defendant's own statement to that effect. As against this, there is the evidence of the Plaintiff and her parents that they supplied board for several months in 1934—5 to the Defendant and his infant daughter, whereas the Hindoo religion strictly prohibits its adherents from partaking of meals with, or meals prepared or touched by, non-Hindoos, on pain of defilement. Difference of religion, moreover, is not a legal impediment to marriage.

*Cur. Adv. Vult.*